Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
Policies Regarding Mobile Spectrum)	WT Docket No. 12-269
Holdings)	W I DOCKET NO. 12-203

COMMENTS OF SPRINT NEXTEL CORPORATION

SPRINT NEXTEL CORPORATION

Lawrence R. Krevor Vice President, Legal and Government Affairs – Spectrum

Rafi Martina *Counsel, Legal and Government Affairs* 900 Seventh St. NW, Suite 700 Washington, DC 20001 (703) 433-4140

Regina M. Keeney Charles W. Logan Stephen J. Berman LAWLER, METZGER, KEENEY & LOGAN, LLC 2001 K Street NW, Suite 802 Washington, DC 20006

Counsel to Sprint Nextel Corporation

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I. INTRODUCTION AND SUMMARY

In the Notice of Proposed Rulemaking (*Notice*) in this proceeding,¹ the Commission seeks to ensure that its spectrum aggregation rules and polices "afford all interested parties greater certainty, transparency and predictability to make investment and transactional decisions, while also promoting the competition needed to ensure a vibrant, increasingly mobile economy driven by innovation." Sprint Nextel Corporation (Sprint) fully supports these objectives.

Spectrum is a critical input in the provision of mobile communications services that has become even more important with the growing consumer demand for mobile broadband service. In carrying out its statutory duties in licensing and regulating spectrum use, the Commission must ensure that its policies governing access to this critical input promote competition, investment, and innovation. The Commission has long recognized the need for ongoing diligence regarding spectrum aggregation because "mobile service licensees might exert undue

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Policies Regarding Mobile Spectrum Holdings, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 (2012) (FCC 12-119) (Notice).

² *Id.* ¶ 15.

market power or inhibit market entry by other service providers if permitted to aggregate large amounts of spectrum."³

The Commission's existing spectrum screen approach is not inherently flawed. To achieve key public interest objectives, however, the Commission should modify its policies to take into account important differences among spectrum bands as to their utility for deploying mobile telephony and high-speed, high-capacity wireless broadband services. This concern arose during debates concerning the Middle Class Tax Relief and Job Creation Act of 2012,⁴ as Congress considered whether to permit the Commission to apply spectrum aggregation policies that could limit participation in future spectrum auctions by the current two largest wireless carriers.

After extensive consideration, Congress maintained the Commission's jurisdiction to adopt rules of general applicability that would limit the ability of any carrier that already has significant spectrum holdings to dominate future spectrum auctions. While the Commission cannot single out a specific carrier for exclusion from a spectrum auction as long as that carrier complies with the applicable auction rules and licensing requirements, it retains the authority to limit the amount of spectrum a carrier can acquire in an auction by band, geography or in total. Similarly, the Commission can adopt spectrum holdings or spectrum aggregation limits such that a licensee might have to divest some of its existing spectrum holdings upon being the winning bidder in a future spectrum auction or as the result of a secondary market transaction.⁵

Id. ¶ 7, quoting Implementation of Section 3(n) and 332 of the Communications Act – Regulatory Treatment of Mobile Services, Third Report and Order, 9 FCC Rcd 7988, ¶ 239 (1994).

⁴ Pub. L. No. 112-96, 126 Stat. 156 (2012).

See Speech of Hon. Henry A. Waxman, U.S. House of Representatives, 158 Cong. Rec. E 265 (Feb. 28, 2012) (". . . Congress intends for the FCC to continue to promote competition through its spectrum policies. The FCC can adopt and enforce, for example, a spectrum cap

Simply put, the 2012 Act reaffirmed the Commission's authority to adopt and maintain spectrum aggregation policies directed at promoting competition and preventing any carrier from exerting market power through inordinate domination of this essential input. The changes Sprint proposes here are not intended to prevent any carrier from acquiring the spectrum it needs to serve its customers. Rather, the spectrum holdings policies described herein would produce a more accurate picture of the real-world utility of a carriers' existing spectrum assets in a mobile telephony/broadband world and therefore better predict whether a carrier's future spectrum acquisitions – whether through Commission auction or by market transaction – raise competitive concerns.

The Commission has recognized that spectrum below 1 GHz has propagation characteristics that make it particularly desirable for providing mobile broadband coverage, yet Verizon and AT&T have aggregated approximately 75 percent of this valuable and scarce spectrum. The "Twin Bells" predominant share of spectrum below 1 GHz – resulting, at least in part, from being assigned cellular block spectrum for free as incumbent providers many years ago – has limited other carriers from obtaining license rights to these spectrum bands. This aggregation of spectrum – especially the low-band spectrum well-suited for building nationwide, wide-area regional and rural coverage with good in-building penetration characteristics – is exacerbating the trend towards a Twin Bell duopoly in the U.S. wireless marketplace and thus undermining competition, investment and innovation. The Commission should reverse this trend and promote robust wireless competition by adopting more effective and more targeted spectrum aggregation rules and policies.

through a rule that applies either to all licenses or to spectrum offered in a particular auction, as long as such rules are not party-specific. [The 2012 Act] thus preserves the FCC's ability to require, among other things, the divestiture of specific spectrum, such as spectrum below 1 GHz, in order to promote competition.").

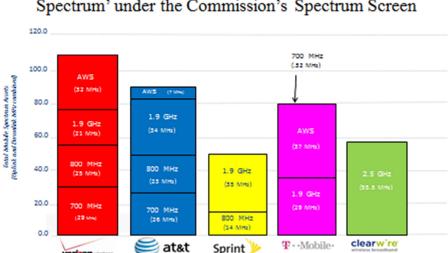
Accordingly, the Commission should adopt a cap for spectrum below 1 GHz that would apply prospectively to both Commission spectrum auctions and secondary market transactions, including the incentive auction the Commission will be conducting for broadcast TV spectrum. This measure, which should apply to licensed spectrum holdings but not spectrum that is leased or subleased pursuant to an arm's length agreement, would help to ensure a more competitive distribution of spectrum below 1 GHz to enhance competition. The Commission should also revise its spectrum screen (which should similarly apply to licensed but not leased or sub-leased spectrum rights) to weight different bands according to estimates of their relative utility in the provision of mobile telephony/broadband services. Use of such market-based weightings will provide a far more accurate, reliable tool for measuring a licensee's spectrum holdings than occurs today under the Commission's existing spectrum screen policies, which incorrectly assume that a "megahertz equals a megahertz" across different frequency bands and different carrier networks. By adopting a 1 GHz spectrum cap and a weighted spectrum screen, along with a number of policy modifications, the Commission can help promote greater mobile broadband competition and innovation.

II. THE TWIN BELLS' DOMINANT SHARE OF SPECTRUM UNDER 1 GHZ HARMS COMPETITION AND INNOVATION

A. AT&T and Verizon Together Hold a Dominant Spectrum Position Below 1 GHz

AT&T and Verizon today hold a dominant position in the most commercially valuable segments of the radio spectrum. Together, they control a large volume of nationwide spectrum suitable for mobile telephony/broadband services, with extensive holdings in the 700 MHz, 850 MHz cellular, Personal Communications Services (PCS), and Advanced Wireless Services (AWS) spectrum bands. In particular, AT&T and Verizon hold the vast majority of the

"beachfront" spectrum below 1 GHz. The substantial disparity between the Twin Bells' spectrum holdings below 1 GHz and the holdings of other U.S. wireless carriers is shown in the chart below, which provides wireless carriers' population-weighted nationwide spectrum holdings for mobile telephony/broadband services.



Spectrum Holdings by Carrier: Nationwide Population-Weighted Averages of 'Available Spectrum' under the Commission's Spectrum Screen

Figures represent nationwide population-weighted averages by band and carrier, inclusive of pending transactions as of Federal Communications Commission Universal Licensing System (ULS) data dated 11/8/2012.

As shown in the chart, AT&T holds a nationwide average of 49 MHz and Verizon a nationwide average of 54 MHz of spectrum below 1 GHz. Each of these carriers holds spectrum below 1 GHz that is equal to *more than three times* Sprint's below 1 GHz holdings in the 800 MHz band.⁷ Together, the Twin Bells control approximately 75% percent of the spectrum below

The T-Mobile spectrum holdings depicted in the above chart include MetroPCS's spectrum holdings given the proposed T-Mobile – MetroPCS transaction currently pending before the Commission.

See, e.g., Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, Fifteenth Report, 26 FCC Rcd 9664, ¶ 299 (2011) (Fifteenth Report) (noting that "when measured on a licensed MHz-POP basis, Verizon Wireless holds 47.7 percent of the Cellular spectrum and 42.8 percent of the 700 MHz spectrum, while AT&T holds 43.6 percent of the Cellular spectrum and 24.4 percent of the 700 MHz band spectrum"). This Commission statement does not account for secondary market

1 GHz that is suitable for commercial mobile broadband use, including 86% of such spectrum in the top 10 U.S. markets and over 80% in the top 50 markets.⁸

B. The Commission's Spectrum Aggregation Policies Should Recognize That Not All Spectrum Is Created Equal

Under the Commission's existing screen mechanism, all spectrum suitable for mobile telephony/broadband services is counted equally, no matter the spectrum band. It is not the case, however, that a "megahertz equals a megahertz." Commercial spectrum bands differ from one another in numerous technical, operational, and regulatory aspects, including signal propagation, availability of network equipment and consumer handsets, size and contiguity of spectrum blocks, availability of paired bands for uplink and downlink transmissions, technical restrictions (e.g., guard bands, power limits), cost of clearing incumbents, and need for coordination or other complex negotiations with other licensees. As a result of these disparities, "[t]wo licensees may hold equal quantities of bandwidth but nevertheless hold very different spectrum assets."

As the Commission has recognized, the below 1 GHz spectrum dominated by the Twin Bells affords them significant advantages in the provision of mobile telephony/broadband

transactions that have occurred since the *Fifteenth Report*, including AT&T's acquisition of Qualcomm's 700 MHz spectrum. *See Application of AT&T Inc. and Qualcomm Incorporated; For Consent to Assign Licenses and Authorizations*, Order, 26 FCC Rcd 17589 (2011) (*AT&T-Qualcomm Order*).

Figures calculated based on data in the Commission's Universal Licensing System (ULS) as of November 28, 2012. AT&T's total spectrum holdings include a nationwide average of 91 MHz of spectrum suitable for mobile telephony/broadband services, while Verizon has a total of 108 MHz falling into that category. (This total does not include AT&T's 28 MHz of Wireless Communications Services (WCS) spectrum in the 2.3 GHz band.) Overall, AT&T and Verizon together control almost two-thirds of the spectrum held by the four national carriers.

See, e.g., Fifteenth Report ¶¶ 289-95. See also An Introduction to Spectrum Engineering, Julius Knap, Chief, Office of Engineering and Technology, Federal Communications Commission, as part of the Department of Energy Seminar on Spectrum Policy for the Utility Sector (Dec. 8, 2010), available at: http://energy.gov/sites/prod/files/gcprod/documents/ FCC Engineering SpectrumPresentation 120810.pdf>.

Fifteenth Report ¶ 290.

services today.¹¹ Spectrum below 1 GHz has better intrinsic spectrum propagation than spectrum in higher bands and therefore provides signal coverage over larger geographic areas, including in adverse climate conditions and through difficult terrain, including rural areas. Operations in these bands also provide superior penetration of buildings, vehicles, and other physical obstacles, thereby typically requiring fewer cells in urban areas to achieve sufficient signal strength.¹² To achieve equivalent coverage, a licensee that holds spectrum in a higher frequency range generally has had to construct more cell sites at greater cost than a licensee with primary holdings in a lower frequency band.¹³ With fewer cell sites needed, build-out in the 700 MHz and 850 MHz cellular bands can typically be achieved at less expense to carriers and, if adequate competition exists, lower cost to consumers.

This is not to say, however, that spectrum above 1 GHz has little utility for mobile telephony/broadband deployments. On the contrary, many of today's wireless networks in the United States, covering tens of millions of customers, operate in the 1.9 GHz PCS spectrum band. Moreover, Sprint introduced the first 4G broadband services in the United States using wholesale capacity purchased from Clearwire's 2.5 GHz WiMax network. The shorter propagation range of 2.5 GHz spectrum, for example, is well-suited to maximizing cellular reuse and thereby increasing subscriber capacity while maintaining broadband speeds in densely-

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Id. ¶¶ 291-295.

Id. ¶ 292.

Id. ¶ 293. As the Commission describes in the *Fifteenth Report*, the National Institute of Standards and Technology (NIST) performed a study in 2010 demonstrating that while it required nine cells at 2.4 GHz and four cells at 1.9 GHz to span 100 square meters, it was projected to require only one cell to cover the same area at 700 MHz. *Id.* (citing NIST, 700 MHz Band Channel Propagation Model, available at: http://www.nist.gov/itl/antd/emntg/700mhz.cfm>.

populated markets.¹⁴ The ideal mobile telephony/broadband network might well feature a blend of commercial spectrum bands leveraging their differing physical and operational characteristics to produce the most efficient and robust spectrum use at the lowest cost.

The Commission has recognized precisely this point, emphasizing that an optimal spectrum portfolio likely contains a mixture of high and low frequencies. Thus, consistent with the 2012 Act, the Commission's role is to adopt a regulatory framework that recognizes the current distribution of spectrum among competing carriers and then ensures that all competitors have reasonable opportunities to acquire the mix of spectrum bands best suited to complement their existing spectrum positions (or assemble viable portfolios of spectrum in the case of new entrants) and thereby promote long-term competition in wireless communications and wireless access to the Internet. To make that possible, the Commission's rules must more effectively guard against carriers aggregating disproportionately large and thereby anti-competitive shares of commercial mobile telephony/mobile broadband spectrum, particularly for especially scarce and better propagating sub-1 GHz spectrum.

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Due to the 2.5 GHz licensing scheme, a potential 2.5 GHz broadband provider must layer irregularly shaped geographic licenses and leases across multiple channels to assemble enough spectrum to provide mobile broadband service. Moreover, some portions of the 2.5 GHz band are entirely unsuitable for mobile telephony/broadband services, and the Commission has excluded these band segments from its spectrum screen calculations. As a result of these limiting realities, the Commission counts BRS as contributing 55.5 MHz in its spectrum screen calculations. See Applications of AT&T Inc. and Centennial Communications Corp. for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, Memorandum Opinion and Order, 24 FCC Rcd 13915, ¶¶ 43-44 (2009).

See, e.g., Fifteenth Report ¶ 307 ("[G]iven the superior propagation characteristics of spectrum under 1 GHz, particularly for providing coverage in rural areas and for penetrating buildings, providers whose spectrum assets include a greater amount of spectrum below 1 GHz spectrum may possess certain competitive advantages for providing robust coverage when compared to licensees whose portfolio is exclusively or primarily comprised of higher frequency spectrum. As discussed above, holding a mix of frequency ranges may be optimal from the perspective of providing the greatest service quality at low cost."); *Implementation of Section* 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Fourteenth Report, 25 FCC Rcd 11407 ¶ 283 (2010).

C. The Commission Should Modify Its Spectrum Aggregation Policies to Promote Competition and Innovation

The Commission's spectrum aggregation policies have gained heightened importance in recent years as a result of accelerating consumer demand for wireless broadband, the limited supply of additional broadband-capable spectrum, and the greater pace of consolidation in the wireless industry. In response to these factors, the Commission must take the steps necessary to ensure that competitors to the Twin Bells have access to critical spectrum resources. By decisively addressing the Twin Bells' excessive spectrum concentration (and most notably concentration of spectrum below 1 GHz), the Commission can revitalize wireless broadband competition and generate critical pro-consumer benefits, including more affordable pricing, greater innovation, and faster broadband deployments.

As noted above, the Twin Bells already have the ability to exercise anti-competitive market power given their predominant share of attractive spectrum under 1 GHz. The Commission should address the risk of harm to competition and consumers by (1) modifying its existing spectrum screen so that the different frequency bands counted under the screen are weighted according to their relative values in the marketplace, and (2) adopting a spectrum cap for spectrum under 1 GHz. Under this hybrid approach, on a going-forward basis, applicants seeking to acquire spectrum in FCC auctions or in secondary-market transactions would be subject both to a bright-line limit on licensed spectrum holdings below 1 GHz, as well as a case-by-case analysis that assesses their total licensed mobile spectrum holdings under the revised screen. This refined approach is necessary to promote more robust competition among wireless carriers, stimulate investment in broadband services, and encourage greater innovation.

Although licensed spectrum holdings should be subject to this hybrid analysis, spectrum that is leased or subleased pursuant to an arm's length agreement between a licensee (or sublessor) and another party should not be subject to the proposed spectrum cap or screen.

1. Spectrum Cap for Spectrum Below 1 GHz

A spectrum cap below 1 GHz could, for example, limit any one carrier to one-third of the total amount of spectrum below 1 GHz that is suitable for mobile broadband service, including the commercial 700 MHz bands, 850 MHz cellular bands, and 14 MHz of ESMR spectrum.¹⁷ Based on these current allocations, the cap would be 45 MHz (134 ÷ 3).¹⁸ Such as cap could be reviewed periodically and revised upward as additional spectrum below 1 GHz (*e.g.*, licensed spectrum blocks made available through the broadcast TV incentive auction) is made available for mobile telephony/broadband use.¹⁹

This proposed spectrum cap will further the Commission's competition goals and also offer "greater certainty, clarity, and predictability regarding which licenses [wireless providers] could acquire." This clarity is particularly important for the Commission's spectrum auctions, as bidders will know with certainty before the auction which licenses they will be eligible to bid on. Such certainty can encourage auction participation by facilitating business planning and efforts to obtain financing. A spectrum cap should also limit the ability of the Twin Bells to

Sprint agrees with the proposal in the *Notice* to reduce the amount of "suitable SMR spectrum" under the Commission's spectrum aggregation policies from 26.5 MHz to 14 MHz reflecting the fact that the Commission's rules do not permit high-capacity, low-site, frequency reuse network architecture in the 806/851 - 817/862 spectrum block. *See Notice* ¶ 29.

The proposed cap could initially exclude the 10 MHz of the Upper 700 MHz D Block, because of its reallocation from commercial to public safety use. The Commission could consider, however, whether to attribute any D Block spectrum to commercial carriers if FirstNet permits commercial carriers to share D Block or other 700 MHz public safety spectrum capacity when not required for public safety communications.

Regular reviews of which spectrum bands are counted under the Commission's spectrum aggregation policies – both above and below 1 GHz – would ensure that these policies keep pace with technological and regulatory developments and provide greater certainty for parties to structure their business planning.

Notice \P 20.

²¹ *Id*.

employ blocking and retaliatory bidding strategies that discourage bidding in FCC spectrum auctions by competitors and new entrants.²²

Sprint does not oppose the grandfathering of existing spectrum holdings so that existing licensees would not be required to divest any spectrum licenses they hold today in order to comply with a spectrum cap. Any such grandfathering policy, however, would make it critical for the Commission to conclude the applicable rulemaking proceedings and adopt the proposed cap *before* the Commission commences the broadcast TV incentive auction.²³ That auction may be the only opportunity in the foreseeable future for wireless carriers to acquire significant spectrum rights below 1 GHz that are not already controlled by the Twin Bells.

2. Revised Spectrum Screen

As discussed in section II.B above, the Commission's current spectrum screen is based on the patently incorrect assumption that "every megahertz is created equal" for use in commercial wireless networks. Treating every megahertz of commercial spectrum as having the same utility makes no sense in evaluating the competitive impact of spectrum aggregation through either Commission spectrum auctions or secondary market transactions. The Commission should instead modify its spectrum screen to recognize the important engineering

See Dr. Gregory Rose, "Spectrum Auction Breakdown: How Incumbents Manipulate FCC Auction Rules to Block Broadband Competition," New America Foundation – Wireless Future Program, Working Paper No. 18 (June 2007), available at: http://www.newamerica.net/files/nafmigration/WorkingPaper18_FCCAuctionRules_Rose_FINAL.pdf.

While incentive auctions for broadcast spectrum could provide Sprint and other carriers an opportunity to obtain spectrum below 1 GHz, the timing of such auctions is uncertain. *See*, *e.g.*, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-268, Notice of Proposed Rulemaking, FCC 12-118 (rel. Oct. 2, 2012). Notwithstanding the uncertainty of when this spectrum may become available for actual incorporation into broadband networks, this proceeding presents the Commission with the opportunity to apply new or revised spectrum aggregation limits, adopted through a notice and comment rulemaking of general applicability, to constrain the Twin Bells from continuing their domination of this spectrum by outbidding Sprint and other competitive carriers (or new entrants) for this additional sub-one gigahertz beachfront spectrum.

and marketplace distinctions among different spectrum bands. One option the Commission should explore is assigning relative value-weightings to different spectrum bands based on prices paid at auction and in secondary-market spectrum transactions. T-Mobile has previously filed an expert report with the Commission setting forth such a weighting system:²⁴

Band	Value Weight
Cellular	1.70
700 MHz	1.50
SMR	1.50
AWS/PCS	0.75
BRS	0.20

These relative weightings are based on analyst reports regarding FCC auctions and secondary-market transactions and provide a reasonable starting point for capturing the numerous differences among spectrum bands as reflected in the marketplace. Sprint offers the T-Mobile proposed weighting values as one example of how the Commission could establish a more reliable, accurate and useful method for evaluating the competition implications of future spectrum acquisitions.²⁵

A workable, value-weighted approach will enable the Commission to analyze spectrum aggregation in a more comprehensive manner that takes into account not only spectrum quantities but also qualitative factors that are highly relevant to the input market for spectrum. A revised screen will provide a fairer, more accurate system for distinguishing spectrum transactions that pose no competitive risk from those arrangements that warrant closer

Petition to Deny of T-Mobile USA, Inc., WT Docket No. 12-4, Exhibit C (Feb. 21, 2012) (attaching Declaration of Professor Peter Cramton).

The Commission may wish to explore other mechanisms for estimating the relative weightings of different spectrum bands under its spectrum screen. As described in the *Notice* ¶ 37, some parties have proposed examining technical characteristics (*e.g.*, wavelength, interference issues) in comparing different bands. Another potential option would seek to generate spectrum weights based on the relationship between network output (measured in in megabytes) and different frequency bands.

Commission scrutiny.²⁶ To be sure, development of an appropriate and fact-based method to weight spectrum by bands may require additional study by the Commission. While a practical, effective weighting system is being developed, the Commission should move forward with imposing a cap on spectrum below 1 GHz as proposed above given the extensive record developed by the Commission – and repeated Commission acknowledgement – of the substantial competitive implications of extensive spectrum holdings below the 1 GHz threshold.

Sprint supports the continued use of the combined mobile telephony/broadband services "product market" for purposes of applying the Commission's spectrum screen.²⁷ In addition, to account for actual market competition, Sprint supports applying the spectrum screen on a local market basis and, where appropriate, also applying the screen on a nationwide basis. Some transactions, such as the withdrawn AT&T – T-Mobile transaction, raise spectrum aggregation issues that implicate competition on a national level and should therefore be assessed on a nationwide basis.²⁸

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Sprint opposes inclusion of the Educational Broadband Service (EBS) spectrum or any additional Broadband Radio Service (BRS) spectrum in the Commission's analysis of spectrum concentration. As noted above, the Commission has thoroughly reviewed this issue on prior occasions and correctly concluded that 55.5 MHz of BRS spectrum should be deemed suitable and available for mobile telephony/broadband services. *See supra*, note 14. *See also Sprint Nextel Corporations and Clearwire Corporation; Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570, ¶¶ 67-70 (2008); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC; For Consent of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, 23 FCC Rcd 17444, ¶ 65 (2008); Reply Comments of Sprint Nextel Corporation, WT Docket No. 11-65, at 41-43 (June 20, 2011).*

Notice ¶¶ 24-25.

Notice ¶¶ 30-32; Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorization, Order, 26 FCC Rcd 16184, Appendix, ¶¶ 32-34 (2011) (attaching Staff Analysis and Findings); AT&T-Qualcomm Order ¶ 32.

III. CONCLUSION

Sprint fully supports the Commission's efforts to review its spectrum aggregation policies to ensure they promote competition and innovation in today's broadband marketplace. To promote these vital objectives, the Commission should revise its spectrum screen to weight different spectrum bands to reflect their marketplace and technical differences. The Commission should also adopt a spectrum cap for spectrum below 1 GHz. The Commission should periodically review the spectrum included in its screen and cap and revise it as necessary to accurately and effectively prevent excessive aggregation that could enable a carrier to exercise market power and thereby restrain or forestall continued competition for the benefit of wireless consumers

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Lawrence R. Krevor Lawrence R. Krevor Vice President, Legal and Government Affairs – Spectrum

Rafi Martina *Counsel, Legal and Government Affairs* 900 Seventh St. NW, Suite 700 Washington, DC 20001 (703) 433-4140

Regina M. Keeney Charles W. Logan Stephen J. Berman LAWLER, METZGER, KEENEY & LOGAN, LLC 2001 K Street NW, Suite 802 Washington, DC 20006 (202) 777-7700

Counsel to Sprint Nextel Corporation

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